

\*\*E-filed 5/21/07\*\*

NOT FOR CITATION  
 IN THE UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

FREDERICK L. JOHNSON,

Petitioner,

vs.

A.K. SCRIBNER,

Respondent.

No. C 03-0274 JF (PR)

ORDER GRANTING MOTION  
 FOR EXTENSION OF TIME  
 TO FILE TRAVERSE;  
 DENYING REQUEST FOR  
 APPOINTMENT OF  
 COUNSEL WITHOUT  
 PREJUDICE

(Docket Nos. 34, 35)

Petitioner, a state prisoner proceeding pro se, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The Court denied Petitioner's motion to proceed in forma pauperis, ordered Petitioner to pay the filing fee, and granted Petitioner's motion to file an amended petition. Petitioner filed an amended petition in September 2003. Thereafter, the Court dismissed the instant habeas action without prejudice for Petitioner's failure to pay the filing fee. On January 4, 2005, the Court granted Petitioner an extension of time to file a motion for reconsideration. On January 18, 2005, Petitioner filed his motion for reconsideration. The Court granted Petitioner's motion for reconsideration, vacated the judgment and reopened the instant action on September 16, 2005. The Court ordered Respondent to show cause as to why the amended petition

1 should not be granted. Respondent filed an answer addressing the merits of the petition.  
2 Petitioner filed a motion for appointment of counsel and a motion for an extension of time  
3 to file a traverse. On January 10, 2007, the Court denied Petitioner's motion for  
4 appointment of counsel and granted Petitioner's motion for an extension of time to file his  
5 traverse. The Court directed Petitioner to file his traverse within thirty days. Petitioner  
6 filed his traverse on February 20, 2007. On March 19, 2007, Petitioner filed a motion for  
7 extension of time to file his traverse. The Court concludes that Petitioner has shown good  
8 cause for such extension. Petitioner's motion (docket no. 34) is GRANTED. The  
9 traverse, filed on February 20, 2007, is deemed timely.

10 Petitioner also filed a letter with the Court explaining his disabilities which  
11 include: low cognitive functioning, attention disorder and mild schizophrenia. In his  
12 letter, Petitioner renews his request for appointment of counsel to proceed with this case.

13 As set forth in the Court's previous order denying appointment of counsel, the Sixth  
14 Amendment's right to counsel does not apply in habeas corpus actions. Knaubert v.  
15 Goldsmith, 791 F.2d 722, 728 (9th Cir. 1986). 18 U.S.C. § 3006A(a)(2)(B) authorizes  
16 appointment of counsel to represent a habeas petitioner whenever "the court determines  
17 that the interests of justice so require and such person is financially unable to obtain  
18 representation." The decision to appoint counsel is within the discretion of the district  
19 court. See Chaney v. Lewis, 801 F.2d 1191, 1196 (9th Cir. 1986), cert. denied, 481 U.S.  
20 1023 (1987); Knaubert, 791 F.2d at 728; Bashor v. Risley, 730 F.2d 1228, 1234 (9th  
21 Cir.), cert. denied, 469 U.S. 838 (1984).

22 The Court concludes that the interests of justice do not require appointment of  
23 counsel at this time. The matter is now fully submitted and awaiting review by the Court.  
24 The issues presented are relatively straightforward and no evidentiary hearing appears  
25 necessary.

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1 Accordingly, Petitioner's request for appointment counsel (docket no. 35) is DENIED  
2 without prejudice. The Court will review the merits of the petition in a separate written  
3 order.

4 IT IS SO ORDERED.

5 DATED: 5/18/07

  
JEREMY FOGEL  
United States District Judge

1 A copy of this order was mailed to the following:

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